BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS

STATE OF CALIFORNIA

M. W., Claimant, vs. NORTH LOS ANGELES COUNTY REGIONAL CENTER, Service Agency.	CASE No. L2005090556

DECISION

The hearing in the above-captioned matter was held on April 24, 2006, at Santa Clarita, California. Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings, presided. Claimant M.W. appeared through his parents, Mr. and Mrs. W.[1] The Service Agency was represented by Stella Dorian and Ruth Janka.

Evidence was offered, and the case was argued, and submitted on the hearing date. The Administrative Law Judge hereby makes his factual findings, legal conclusions, and orders, as follows.

STATEMENT OF ISSUES AND INTRODUCTION

The parties in this case defined the issue as whether a previous fair hearing decision, which ordered the Service Agency to continue funding of horseback riding, did so on the basis that the riding lessons constituted a therapy. Essentially, the parties in this hearing sought an interpretation of that prior decision, issued in January 2005 by Timothy S. Thomas, ALJ. Since that prior decision, the parties are in disagreement about the manner in which the order should be implemented. The Service Agency asserts that the activity was to be funded as a therapeutic program, and that specific therapeutic goals must be established, with a behavioral assessment as a means of establishing the goals. Claimant asserts that the program was not provided solely as a therapeutic regime, and that the prior decision must be given a broader reading, obviating the need for a behavioral assessment at this time. The Service Agency has moved to deny the further provision of the horseback riding services because of the impasse that has resulted, and the Claimant objects to the discontinuance of funding.

[1] Initials are used to protect the family's privacy.

FACTUAL FINDINGS

1. Claimant suffers from autism, and has been eligible for services under the Lanterman Developmental Disabilities Services Act (Lanterman Act), California Welfare and Institutions Code, section 4500, et seq., since May 1997[2]. He was born May 10, 1992, and thus is nearly 14 years old. Prior to becoming eligible for services under the Lanterman Act he received services "on a preventative basis" prior to age three. (Ex. SA-2, p. 3.)[3] There is no dispute that Claimant is generally eligible for services under the Lanterman Act; the dispute here is how certain services should be provided. He is also believed to suffer from Dubowitz Syndrome (SA-8, p. 3.), which is an extremely rare condition that affects Claimant physically.

2. In approximately September 2004, Claimant requested a fair hearing to determine if the Service Agency could discontinue horseback riding lessons, which had been provided to him for a period of years through an organization known as "Heads Up." As noted above, a hearing was held before Timothy S. Thomas, ALJ, in January 2005, and a decision issued January 20, 2005. (*M.W. v. North Los Angeles County Regional Center*, OAH case number L2004090603.) The order in the prior decision states: "NLACRC shall continue to fund the cost of weekly horseback riding lessons with Heads Up. (Ex. CL-28h, p. 9.) Neither party sought review of the January 2005 decision (prior decision), and the order is therefore final.

3. After the decision was received, the Service Agency continued to fund Claimant's attendance at "Heads Up", for one session per week, as it had previously done. Individual Program Plan (IPP) meetings were held, but the efforts at planning broke down because of a dispute between the parties as to what, if any, steps would be taken to set goals for the horseback riding service, and how any measurement of progress toward those goals would be performed. On August 31, 2005, the Service Agency issued two Notices of Proposed Action; each proposed to deny the provision of horseback riding. One such Notice denied the services as a means of respite, and the other denied the service as a type of therapy. (Ex. SA-1, pp. 21 & 22.) On September 9, 2005, Claimant's parents, acting on his behalf, filed a Fair Hearing Request, which stated that Claimant wanted the prior decision enforced, and the funding for the horseback riding continued. This hearing ensued.

5. As the prior decision reveals, Claimant began horseback riding lessons in 2001 at Heads Up. It was funded at that time as a "special recreational activity", taking the place of swimming lessons that had previously been funded by the Service Agency. (Ex. CL-28h, factual finding 4.) Those services were funded without objection by the Service Agency until June 2004; the prior decision found that the service was re-authorized in May 2002 as

[2] All further statutory references shall be to the Welfare and Institutions Code, unless otherwise noted.

[3] Each party numbered their exhibits. Therefore, the Service Agency's exhibits will be identified as "SA", and the Claimant's with a "CL", along with the appropriate exhibit number.

meeting the goals of improving behavior, focus, and social skills.[4] In mid-2004, when the Service Agency would not agree to further funding, it first asserted that reasonable progress toward stated objectives of one of the prior IPP's—the goal of improving behavior—had not been demonstrated. (*Id.*, at factual finding 9.) Thereafter, in September 2004, the Service Agency gave further reasons for denying the service. (*Id.*, at factual finding 10.)

6. At the prior hearing, the Service Agency introduced evidence to the effect that horseback riding had no proven therapeutic benefit, and that behaviors could not be modified except through the use of applied behavioral analysis. It also offered evidence that it was eliminating organized weekly activities in response to a statewide budget crisis, and a legislative mandate that the regional centers reduce their expenditures. (Ex. CL-28h, factual findings 16-18.)

7. In his legal conclusions, Judge Thomas noted that the Service Agency had funded a weekly organized activity for Claimant for several years, and that "all evidence supports the conclusion that [Claimant] has benefited from these activities in several ways. While the evidence is admittedly 'anecdotal' in the scientific sense, the parents have observed improvements in behavior, motor skills, social skills, and other evidence of his development." (Ex. CL-28h, legal conclusion 4.) Judge Thomas also noted that Claimant's pediatrician and social skills trainer urged continued participation in horseback riding, but no regional center witness had observed the boy in action with the horses. (*Id.*)

8. On the issue of therapeutic validity of the service, Judge Thomas concluded that the lack of scientific validation was not disposative of the matter. At legal conclusion 5 he stated that the Service Agency's position on the therapeutic benefits (or lack thereof) of equestrian activity "ignores two very salient facts: first, when swimming, and later horseback riding, was approved . . . initially, there was no requirement that the activities . . . have specific therapeutic qualities . . . . It is presumed that the [IPP team] approved both activities as beneficial to Claimant generally, and because they furthered the goals of socialization and recreation."

9. Holding that the Service Agency's service policies could not serve to restrict the types of services that it was required to provide under the Lanterman Act, Judge Thomas concluded that the Service Agency bore the burden of proving that the goals stated in the IPP were not being furthered by continued funding of the horseback riding. (Ex. CL-28h, legal conclusions 6 & 7.) He concluded further that the burden had not been carried by the Service Agency, and that the evidence in fact was to the contrary of the Service Agency's position. (*Id.*, at legal conclusion 7.)

10. Here the Service Agency argues that under the Lanterman Act any service it provides must be provided with an eye toward meeting certain goals, and that it must take steps to measure progress toward those goals. Therefore, it has renewed a request to the

[4] At some point between 2001 and 2004 the service was funded as "'weekly organized activity,' a family support service." (Ex. CL-28h, factual finding 13.)

Claimant's parents that it conduct a behavioral assessment, so that it can measure what behaviors, such as toe-walking, will be addressed by the horseback riding, and to create a baseline for measuring progress.[5] Respondent's mother and father perceive this action as a subterfuge designed to eventually eliminate the service, in part because a staff person from the Service Agency stated that behavioral services have a beginning, middle, and end. That "ending" is of great concern to Claimant's family, which wishes to continue the horseback riding services.

11. A manager for the Service Agency acknowledged that for some services, such as respite care, the goals of such services and progress toward those goals cannot be easily quantified, at least from an objective point of view.

12. Claimant's mother testified credibly that her son's options for recreational activity and social interaction are quite limited. He is small in stature, and not able to compete in typical outdoor activities such as soccer or baseball. When he has attempted such he has tended to become isolated, and has not enjoyed the experience. The family does pay for some activities, such as a ski camp. Horseback riding presents an opportunity to function one-to-one with the animal, yet still participate with people at the stables, who assist him with the riding. It the benefits of the activity are not readily quantified, they remain real and substantial for this particular consumer. He has progressed in his ability to ride a horse, and to perform some of the chores required of someone who must care for a horse. The cost of the horseback riding is relatively low, approximately $30.00 per hour, and the typical weekly session is one hour long.

13. It does not appear that anything has changed since Judge Thomas issued the prior decision. The regional center is still demanding a behavioral assessment, with an eye toward measuring the therapeutic benefits of the equestrian activities, and other clinical assessments appear on the horizon to measure any other benefits. Such was demanded by the Service Agency as a condition to the temporary continuation of the service in the fall of 2004. (See CL-28h, factual findings 9 & 10.)

14. Nothing in the prior decision supports the Service Agency's contention that Judge Thomas found the provision of horseback riding lessons to be necessary as a therapy. Instead, he found that the services were beneficial in that they tended to improve behavior, motor skills, and social skills. Further, he presumed the services met the goals of socialization and recreation, and he did not find that presumption rebutted. Finally, he concluded that the Service Agency's service policies could not justify the elimination of a service that was otherwise authorized by the Lanterman Act.

[5] According to the prior decision, the Service Agency attempted to obtain a behavioral assessment in September 2004, prior to the last hearing.

LEGAL CONCLUSIONS

1. Jurisdiction was established to proceed in this matter, pursuant to section 4710 et seq., based on Factual Findings 1through 3.

2. Services are to be provided in conformity with the IPP, per Code section 4646, subdivision (d). Consumer choice is to play a part in the construction of the IPP. Where the parties can not agree on the terms and conditions of the IPP, a Fair Hearing may, in essence, establish such terms. (See § 4710.5, subd. (a).)

3. The services to be provided to any consumer must be individually suited to meet the unique needs of the individual client in question, and within the bounds of the law each client's particular needs must be met. (See, e.g., §§ 4500.5, subd. (d), 4501, 4502, 4502.1, 4640.7, subd. (a), 4646, subd. (a), 4646, subd. (b), 4648, subd. (a)(1) &. (a)(2).) Otherwise, no IPP would have to be undertaken; the regional centers could simply provide the same services for all consumers. The Lanterman Act assigns a priority to maximizing the client's participation in the community. (Code §§ 4646.5, subd. (2); 4648, subd. (a)(1) & (a)(2).)

4. Section 4512, subdivision (b), of the Lanterman Act states in part:

> 'Services and supports for person with developmental disabilities' means specialized service and supports or special adaptations of generic services and support directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives. . . . The determination of which services and supports are necessary shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of . . . the consumer's family, and shall include consideration of . . . the effectiveness of each option of meeting the goals stated in the individual program plan, and the cost-effectiveness of each option. Services and supports listed in the individual program plan may include, but are not limited to, diagnosis, evaluation, treatment, personal care, day care, . . . speech therapy, . . . recreation, education, . . . behavior training and behavior modification programs, . . . camping, community integration services, . . . respite, . . .

5. Services provided must be cost effective (§ 4512, subd. (b)), and the Lanterman Act requires the regional centers to control costs as far as possible and to otherwise conserve resources that must be shared by many consumers. (See, e.g., §§ 4640.7, subd. (b), 4651, subd. (a), 4659, and 4697.) To be sure, the regional centers' obligations to other consumers

are not controlling in the individual decision-making process, but a fair reading of the law is that a regional center is not required to meet a consumer's every possible need or desire, in part because it is obligated to meet the needs of many children and families.

6. The Service Agency contends that it must be able to set goals for its consumers in the IPP's it prepares, and must be able measure progress toward those goals. Support for its position can be found in section 4646, subdivision (a)(2), which states that, among other things, the IPP must contain:

> A statement of goals, based on the needs, preferences, and life choices of the individual with developmental disabilities, and a statement of specific, time-limited objectives for implementing the person's goals and addressing his or her needs. These objectives shall be stated in terms that allow measurement of progress or monitoring of service delivery. These goals and objectives should maximize opportunities for the consumer to develop relationships, be part of community life in the areas of community participation, housing, work, school, and leisure, increase control over his or her life, acquire increasingly positive roles in community life, and develop competencies to help accomplish these goals.

The Service Agency also relied on section 4648, subdivision (a)(7), which provides that services shall not be continued unless the consumer and/or his parents are satisfied, and the parties agree that "planned services and supports have been provided, and reasonable progress toward objectives have been made."

7. It must be noted, however, that section 4646, subdivision (a)(2) calls for provision of objectives that allow for "measurement of progress *or* monitoring of service delivery." (Emphasis added.) Plainly, either is required, and this statute recognizes, as did the Service Agency's witness, that some services such as respite are not readily quantified, and that monitoring of the activity may be sufficient. Otherwise, how could the regional center measure the progress in "camping", a service authorized by the Act? Plainly there is something subjective about many of the services, and if recreation should be fun, and relaxing, it would be enough to establish that the activity was taking place, that the consumer continued to enjoy it, and that the vendor was actually providing the service. This analysis must, in this case, apply to section 4648, subdivision (a)(7), in that there must be reasonable progress toward the objectives of recreation, socialization, and behavioral improvement.

8. In this case it was not established, as argued by the Service Agency, that the prior decision found that the horseback riding was a therapeutic regime, at least in the scientific sense. Judge Thomas essentially rejected the arguments that science could not establish a therapeutic benefit, as medicine or science defines that term, and therefore that the service could not be funded. The consumer need not justify the service in that manner in the future.

9. The Regional Centers, however, should be allowed to perform assessments from time to time so that they can properly serve their consumers. Implicit in the Act's

requirement that IPP's be reviewed at least every three years is the requirement that necessary assessments be conducted. (See § 4646.5.) The regional centers can not discharge their duties if they do not have the right to obtain information, and the power to obtain that information.[6] At the same time, a person who seeks benefits from a regional center must bear the burden of providing information, and submitting to reasonable exams and assessments. (See Civ.Code, § 3521.) Further, a request for services essentially waives objection to the regional center and its staff and consultants having access to otherwise private information. That does not mean, however, the information can otherwise be disseminated for any purpose other than to assess a consumer and provide services. Essentially, a consumer must cooperate in reasonable requests for assessments and evaluations, to assist the regional center in discharging its responsibility.

To the extent that the Service Agency makes reasonable assessment requests in the future, the consumer and his family is obligated to cooperate with those requests. No assessments shall be ordered at this time, as the parties narrowly defined the issue to an interpretation of the prior decision, although a request for such an assessment led to a breakdown in the IPP process.

ORDER

The proposed action of denying horseback services is denied. The decision in case number L2004090603 shall not be read as basing the funding of horseback riding services to Claimant solely as a therapeutic service.

May 8, 2006

_____

Joseph D. Montoya
Administrative Law Judge
Office of Administrative Hearings

[6] This is a long-accepted legal concept. See Hohfeld, *Some Fundamental Legal Conceptions as Applied in Judicial Reasoning*, 23 Yale L.J. 16 (1913).